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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/694,209 10/23/00 HAEBERLIN

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001095
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HM12/0227

EXAMINER

KRASS, F

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

02/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------------|-----------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/694,209 | HAEBERLIN ET AL. |
| | Examiner Frederick Krass | Art Unit 1614 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 8-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 8-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:
 1. received.
 2. received in Application No. (Series Code / Serial Number) 09/077,398.
 3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) Notice of References Cited (PTO-892)
- 15) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 17) Interview Summary (PTO-413) Paper No(s). _____
- 18) Notice of Informal Patent Application (PTO-152)
- 19) Other: _____

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Formalities

The following informalities are noted. While not indefinite, these items place the claims in poor form, and should be corrected.

- 1) Claim 1, second line, after the word "release" there should be inserted --- of ---
- 2) Claims 10 and 12, no production steps were claimed previously, rendering the phrase "is produced" superfluous. Since the phrase is not necessary to an understanding of the claimed subject matter, the examiner recommends deleting same.
- 3) Claim 11, "harness" should read --- hardness ---

Obviousness-Type Double Patenting Rejection

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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1) Claims 1 and 8-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,172,107. Although the conflicting claims are not identical, they are not patentably distinct from each other; it is apparent on its face that the scope of the instant and conflicting claims substantially overlap.

2) Claims 1 and 8-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of USP 6,025,391. Although the conflicting claims are not identical, they are not patentably distinct from each other; it is apparent on its face that the scope of the instant and conflicting claims substantially overlap.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (703) 308-4335. The examiner can normally be reached on Monday, Tuesday, Thursday or Friday from 7am to 3pm. The examiner is off Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Cintins, can be reached on (703) 308-4725. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0193.

Frederick Krass
Primary Examiner
Art Unit 1614

